

**IN THE UNITED STATES DISTRICT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

NISSAN MOTOR ACCEPTANCE  
CORPORATION  
8900 Freeport Parkway  
Irving, TX 75063

Plaintiff

v.

AUTOMAX STREETSBORO N, LLC d/b/a  
NISSAN OF STREETSBORO  
Attention: Bruce S. Schoenberger,  
Statutory Agent  
One Seagate, Suite 1645  
Toledo, Ohio 43604

and

AUTOMAX AIRPORT N, LLC d/b/a  
AIRPORT NISSAN  
Attention: Bruce S. Schoenberger,  
Statutory Agent  
One Seagate, Suite 1645  
Toledo, Ohio 43604

and

AUTOMAX STREETSBORO HOLDINGS,  
LLC  
Attention: Bruce S. Schoenberger,  
Statutory Agent  
One Seagate, Suite 1645  
Toledo, Ohio 43604

and

AVIATE CAPITAL AUTO 1, LLC  
Attention: Bruce S. Schoenberger,  
Statutory Agent  
One Seagate, Suite 1645  
Toledo, Ohio 43604

Defendants

: CASE NO. 3:19-cv-01251

:

: Judge

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

**COMPLAINT FOR MONEY DAMAGES**

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

Plaintiff Nissan Motor Acceptance Corporation (“Plaintiff”) states as follows for its Complaint against Defendants Automax Streetsboro N, LLC d/b/a Nissan Of Streetsboro, Automax Airport N, LLC d/b/a Airport Nissan, Automax Streetsboro Holdings, LLC, and Aviate Capital Auto 1, LLC:

1. Plaintiff files this action to recover repayment of loans it made to finance two car dealerships that have closed, and to collect from the guarantors of those loans.

2. As described below, this is an action between a citizen of California on the one side (Plaintiff) and citizens of Ohio on the other side (Defendants), that arose in this district and venue under 28 U.S.C. §1391 (a) and (b)(1), and that seeks to recover more than \$75,000 exclusive of interest and costs and is within this Court’s diversity jurisdiction under 28 U.S.C. §1332(a)(1).

3. Plaintiff Nissan Motor Acceptance Corporation is a California corporation and its principal place of business is located at 8900 Freeport Parkway, Irving, TX 75063.

4. Plaintiff is qualified, authorized and licensed to do business in Ohio.

5. Defendant Automax Streetsboro N, LLC is an Ohio limited liability company that operated an authorized dealership of Nissan North America, Inc. known as Nissan of Streetsboro (herein “Streetsboro”).

6. Defendant Automax Airport N, LLC is an Ohio limited liability company that operated an authorized dealership of Nissan North America, Inc. known as Airport Nissan (herein “Airport”).

7. Streetsboro and Airport obtained financing from Plaintiff to acquire motor vehicles and other property pursuant to a written “Automotive Wholesale Financing and Security

Agreement” that each of them signed (herein the “Wholesale Agreements”). True copies of those Wholesale Agreements are attached hereto as Exhibits 1 and 2, respectively.

8. Pursuant to the Wholesale Agreements, Plaintiff made advances to or on behalf of Streetsboro and Airport to enable them to purchase motor vehicles that each of them would then sell or lease to their own customers.

9. In the agreements they signed, Streetsboro and Airport agreed to repay Plaintiff the full amount of all advances made by Plaintiff, together with accrued interest and charges due, on demand.

10. Streetsboro and Airport each materially breached the Wholesale Agreements they signed. Those breaches include their sale of motor vehicles “out of trust,” meaning that they acquired the vehicles with financing provided by Plaintiff and then sold the vehicles and kept the proceeds without repaying Plaintiff the advances it had made to enable them to acquire the vehicles, and their failure to repay their outstanding indebtedness to Plaintiff when it became due.

11. Plaintiff gave both Streetsboro and Airport written notice of their breaches and provided them with an opportunity to cure the breaches, all as described in a letter dated October 20, 2017 (the “October 20, 2017 Letter”) a true copy of which is attached hereto as Exhibit 3.

12. Without legal justification or excuse, both Streetsboro and Airport failed to cure their breaches.

13. All conditions precedent to the obligations of Streetsboro and Airport to perform their obligations under the Wholesale Agreements and the other loan documents between the parties were performed by Plaintiff or waived by Streetsboro and Airport.

14. As a proximate result of the material breaches of contract committed by Streetsboro and Airport, Plaintiff has been damaged. Those damages include but are not limited to the items listed on Exhibit 4, attached hereto.

15. Streetsboro, Airport and Defendants Automax Streetsboro Holdings LLC (“Automax Holdings”), an Ohio limited liability company, Aviate Capital Auto 1, LLC (“Aviate”), an Ohio limited liability company, all signed a “Cross-Guaranty, Cross-Collateral and Cross-Default Agreement” dated as of September 25, 2016 (herein the “Cross Agreement”), and a true copy of that agreement is attached hereto as Exhibit 5.

16. Defendants Automax Holdings and Aviate (each a “Guarantor”) each signed a “Continuing Guaranty Agreement” and copies of those agreements are attached hereto as Exhibits 6 and 7, respectively (herein the “Guarantees”).

17. Plaintiff delivered a copy of the October 20, 2017 Letter to each of the Guarantors, but none of them cured the defaults and each of them breached their obligations under the Cross Agreement and the Guarantees.

18. As a proximate result of the material breaches committed by the Guarantors, Plaintiff has been damaged as described in paragraph 14 above.

WHEREFORE, Plaintiff demands the following relief against Defendants jointly and severally:

A. A money judgment against Defendants for the full amount of Plaintiff’s damages in the amount of \$3,197,485.82 as of November 12, 2018;

B. A money judgment for accrued interest before and after judgment in the amount of \$529.92 per day after November 12, 2018;

C. A judgment for attorney fees, in-house counsel fees, court costs, litigation expenses and all other costs incurred in connection with enforcing Plaintiff's rights under the agreements signed by the Defendants; and

D. All other available relief.

Respectfully submitted,

/s/ Charles A. Bowers

Charles A. Bowers (0064075)  
cbowers@taftlaw.com  
Taft Stettinius & Hollister LLP  
200 Public Square, Suite 3500  
Cleveland, Ohio 44114  
Phone: (216) 241-2838  
Fax: (216) 241-3707

Timothy C. Sullivan (0031069)  
sullivan@taftlaw.com  
Taft Stettinius & Hollister LLP  
425 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202  
Phone: (513) 357-9382  
Fax: (513) 381-0205

*Attorneys for Plaintiff  
Nissan Motor Acceptance Corporation*